

2004 - Judiciary Rules Senate Temporary Rule (Salmon)

ADMINISTRATIVE RULES REVIEW

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Legislative Session 2004

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57.01.01 - RULES GOVERNING THE SEXUAL OFFENDER CLASSIFICATION BOARD

DOCKET NO. 57-0101-0401 - (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 21, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This is a new chapter. (1) Rulemaking addresses the need for quality, uniformity and consistency in sexual offender evaluations provided to the courts prior to sentencing; (2) Establishes an application system to certify sexual offender evaluators; (3) Provides quality assurance for evaluators and evaluations; (4) Adopts into rule, procedures set by the Sexual Offender Classification Board for designating high-risk sexual offenders as Violent Sexual Predators.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

For the protection of public health, safety, and welfare and to comply with state law. This rulemaking is initiated to comply with the provisions of Senate Bill 1002 passed by the 2003 Legislature and signed into law by the Governor on April 8, 2003.

FEE SUMMARY: Pursuant to Section 18-8314(3)(c), Idaho Code, an application-processing fee is required for all qualified providers seeking sexual offender evaluator certification. The application fee for initial certification is \$75. The application fee for annual certification renewal is \$50.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Evaluator qualifications are unchanged from those set by the Sexual Offender Classification Board in the year 2000, pursuant to Section 18-8314, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Baird, Management Assistant, at (208) 658-2149.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before January 28, 2004.

DATED this 17th day of November, 2003.

Kathy Baird, Management Assistant
Sexual Offender Classification Board
1299 N. Orchard St., Suite 110
Boise, ID 83706
(208) 658-2149 phone; (208) 327-7102 fax

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 57-0101-0401

IDAPA 57
TITLE 01
CHAPTER 01

57.01.01 - RULES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 18-8314(7), Idaho Code, to implement the provisions of Sections 18-8312 through 18-8321, Idaho Code. (1-1-04)T

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 57.01.01, "Rules of the Sexual Offender Classification Board". (1-1-04)T

02. Scope. These rules provide procedures for the Sexual Offender Classification Board to: (1-1-04)T

a. Determine whether a sexual offender should be designated as a Violent Sexual Predator; (1-1-04)T

b. Set qualifications and standards for certified evaluators; (1-1-04)T

c. Approve, issue, renew, deny, suspend or revoke psychosexual evaluator certification; and (1-1-04)T

d. Establish fees for applicants seeking certification and certified evaluators seeking annual certification renewal. (1-1-04)T

03. Relationship To The Department Of Correction. The board is created in the Department of Correction, and relies upon it for fiscal and administrative support. The board members are appointed by the governor. The board's powers and duties are separate from the Department of Correction, and are set forth in Section 18-8314, Idaho Code. (1-1-04)T

002. WRITTEN INTERPRETATIONS.

The board may have written statements that pertain to the interpretation of the rules of this chapter. These interpretations, if any, may be found on the board's website. (1-1-04)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals shall be governed by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (1-1-04)T

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (1-1-04)T

01. Association For The Treatment Of Sexual Abusers Professional Code Of Ethics, 2001 Edition. This document is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005. (1-1-04)T

02. Practice Standards And Guidelines For Members Of The Association For The Treatment Of

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Sexual Abusers, 2001 Edition. This document is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005. (1-1-04)T

03. The Sexual Offender Board's "Required Format For Psychosexual Evaluations, July 2003 Revision". This document is available from the board, and is posted on the board's website. (1-1-04)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The Sexual Offender Classification Board administrative office is located at the Department of Correction headquarters, 1299 North Orchard, Suite 110, Boise, Idaho 83706. Business hours are typically 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is Office of the Sexual Offender Classification Board, 1299 North Orchard, Suite 110, Boise, Idaho 83706. The telephone number is (208) 658-2149. The facsimile number is (208) 327-7102. The board's website address is <http://www.state.id.us/socb>. (1-1-04)T

006. PUBLIC RECORDS ACT COMPLIANCE.

01. Administrative Rules. The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (1-1-04)T

02. Public Records Requests. Requests for public information are processed in compliance with Sections 18-8321, 18-8323, and 20-223, Idaho Code; IDAPA 06.01.01, "Rules of the Board of Correction"; and the Idaho Public Records Act. (1-1-04)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Sexual Offender Classification Board described in Section 18-8312, Idaho Code. (1-1-04)T

02. Central Roster Of Certified Evaluators. A roster of evaluators certified by the board as meeting the qualifications to perform psychosexual evaluations. (1-1-04)T

03. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of adult sexual offenders, shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in Sections 18-8314, Idaho Code. (1-1-04)T

04. Client. A person receiving mental health services from a certified evaluator. A client may be a person who is not a sexual offender. (1-1-04)T

05. Evaluation. For the purpose of certification eligibility, defined as the direct provision of comprehensive evaluation and assessment services to an adult who has been convicted of a sexual offense. The evaluation must be related to the client's sexual offending behavior. (1-1-04)T

06. Mental Abnormality. A congenital or acquired condition affecting a person's emotional or volitional capacity in a manner that predisposes him to commit criminal sexual acts and makes him a menace to the health, safety, or both, of other persons. (1-1-04)T

07. Personality Disorder. A congenital or acquired physical or mental condition resulting in a general lack of power to control sexual impulses. (1-1-04)T

08. Predatory. Actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior. (1-1-04)T

09. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing an offender's sexual development, sexual deviancy, sexual history and risk of re-offense. (1-1-04)T

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10. Quality Assurance. Technical review of a psychosexual evaluation to assure minimum standards are met. The board conducts the review. (1-1-04)T

11. Sexual Offender. A person convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts. (1-1-04)T

12. Sexually Violent Offense. A criminal offense as listed in Section 18-8314, Idaho Code; or engaging in physical contact with another person with intent to commit sexual abuse or aggravated sexual abuse as described in Sections 2241 and 2242 of Title 18, United States Code, and Section 18-8303(1), Idaho Code. (1-1-04)T

13. Treatment. For the purpose of certification eligibility, defined as the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense. Treatment must be directly relevant to the client's sexually offending behavior. (1-1-04)T

14. Victim. A person, including the immediate family of a minor, named in the complaint, information or indictment, who suffers physical or emotional injury as the result of the offender's criminal conduct. (1-1-04)T

15. Violent. Engaging in displayed, physical, or verbal sexual contact with a non-consenting person or a person who is unable to give legal consent whether due to age, or mental or physical incapacitation. Contact is considered as actual, attempted, or an act perpetrated with the intent to commit sexual contact. (1-1-04)T

16. Violent Sexual Predator. A person convicted of an offense listed in Section 18-8314, Idaho Code, and who is determined by the board to pose a high risk of committing an offense or engaging in predatory sexual conduct. (1-1-04)T

011. ABBREVIATIONS.

01. ATSA. The Association for the Treatment of Sexual Abusers. (1-1-04)T

02. DSM-IV. The "Diagnostic and Statistical Manual of Mental Disorders – Version 4" of the American Psychiatric Association. (1-1-04)T

03. IDOC. The Idaho Department of Correction. (1-1-04)T

04. VSP. Violent Sexual Predator. (1-1-04)T

012. -- 019. (RESERVED).

020. RECORD KEEPING.

01. Evaluators. Records on all applicants and certifications issued, renewed, denied, suspended and revoked shall be maintained for a period not less than five (5) years. (1-1-04)T

02. Violent Sexual Predators. The sexual offender's file maintained by the board is considered the official file for all purposes. (1-1-04)T

021. BOARD MEETINGS.

01. Meetings. The board meets at least quarterly and may meet more frequently. All business of the board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (1-1-04)T

02. Agenda. An agenda for each regularly scheduled meeting is posted in the IDOC central office at least twenty-four (24) hours prior to the regularly scheduled meeting. (1-1-04)T

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022. -- 030. (RESERVED).

031. OFFENDERS SUBJECT TO EVALUATION.

01. Pre-Sentence. Sexual offenders convicted on or after July 1, 1993 of any offense listed in Section 18-8304, Idaho Code, are subject to psychosexual evaluation prior to sentencing, if ordered by the court. (1-1-04)T

02. Pre-Release. Prior to release from incarceration, the board reviews any sexual offender as listed in Section 18-8314(1), Idaho Code, who has been referred by the IDOC or the Commission for Pardons and Parole, for possible VSP designation. (1-1-04)T

03. Under IDOC Supervision. (1-1-04)T

a. Upon request of the Commission for Pardons and Parole, a sexual offender as listed in Section 18-8314(1), Idaho Code, who has been released on parole and referred by his supervising officer, shall be reviewed by the board for possible VSP designation. (1-1-04)T

b. Upon request of the court having jurisdiction over the offender, a sexual offender as listed in Section 18-8314(1), Idaho Code, who has been released on probation and referred by his supervising officer, shall be reviewed by the board for possible VSP designation. (1-1-04)T

032. -- 039. (RESERVED).

040. CERTIFIED EVALUATOR QUALIFICATIONS.

Each evaluator who performs adult psychosexual evaluations pursuant to Sections 18-8316 and 18-8317, Idaho Code, must meet the qualifications as set forth in Section 040 and be certified by the board. (1-1-04)T

01. Credential. The evaluator's credential must be in good standing with no currently pending disciplinary action by the issuing authority. The certified evaluator shall be a recognized professional, who specializes in evaluation and treatment of adult sexual offenders. (1-1-04)T

02. Educational And Professional Qualifications. A certified evaluator must be: (1-1-04)T

a. A licensed psychiatrist pursuant to Title 54, Chapter 18, Idaho Code; or (1-1-04)T

b. A licensed masters or doctoral level mental health professional pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. (1-1-04)T

03. Specialized Training. (1-1-04)T

a. For initial certification, the applicant must have attended forty (40) hours of formal conferences, symposia, or seminars related to the treatment and evaluation of adult sexual offenders within the preceding two (2) years. These forty (40) hours must include: (1-1-04)T

i. Sixteen (16) hours of training in adult sexual offender evaluation; (1-1-04)T

ii. Sixteen (16) hours of training in adult sexual offender treatment; and (1-1-04)T

iii. Eight (8) hours of additional training in adult sexual offender treatment, adult sexual offender evaluation, or treatment of victims of a sexual offense. (1-1-04)T

04. Experience Qualifications. A certified evaluator shall have at least two thousand (2,000) hours of adult sexual offender treatment and evaluation experience within the preceding seven (7) years. The two thousand (2,000) hours must include: (1-1-04)T

a. At least two hundred fifty (250) hours of adult sexual offender evaluation experience; and

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(1-1-04)T

- b. At least two hundred fifty (250) hours of adult sexual offender treatment experience. (1-1-04)T

05. Continuing Education Requirement. To maintain certification, attendance at forty (40) hours within the preceding two (2) years of formal conferences, symposia, or seminars related to the treatment and evaluation of adult sexual offenders, is required. (1-1-04)T

06. Understanding. A certified evaluator shall have a thorough understanding of counter-transference issues and a broad knowledge of sexuality in the general population. A certified evaluator shall also have a good understanding of basic theories and typologies of sexual offenders and sexual assault victims. (1-1-04)T

041. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

- 01. General Considerations.** A certified evaluator shall: (1-1-04)T

- a. Be fully aware of and adhere to the standards of his area of credentialing; (1-1-04)T

b. Subscribe to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Standards and Guidelines, as referenced in Section 004; (1-1-04)T

c. Be knowledgeable of statutes and scientific data relevant to specialized adult sexual offender evaluation; (1-1-04)T

d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Sections 18-8316 and 18-8317, Idaho Code; (1-1-04)T

- e. Be committed to community protection and safety; (1-1-04)T

f. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgement and risk exploitation; (1-1-04)T

- g. Have no sexual relationships with any client. (1-1-04)T

042. RECIPROCITY.

The board may consider reciprocity for any applicant who has been licensed or certified to perform sexual offender evaluations in another state. An applicant requesting consideration for reciprocity shall submit an initial certification application as outlined in Section 050. (1-1-04)T

043. -- 049. (RESERVED).

050. CERTIFIED EVALUATOR APPLICATION.

- 01. Application For Initial Certification.** An applicant seeking certified evaluator status must submit: (1-1-04)T

a. A completed application on forms provided by the board, accompanied by documents indicated in Subsection 050.02; and (1-1-04)T

- b. An application fee of seventy-five dollars (\$75), payable to the board. (1-1-04)T

02. Documentation. The certification application must be submitted to the board, accompanied by: (1-1-04)T

- a. Proof of professional licensure; (1-1-04)T

- b. Assurances and release form; (1-1-04)T

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c. Verification of educational, professional, and experience qualifications as established in Section 040; (1-1-04)T

d. A statement of fees the applicant charges for evaluation and related services; and (1-1-04)T

e. Copies of two (2) psychosexual evaluations completed by the applicant within the past year, with names and identifying characteristics redacted. (1-1-04)T

03. Certification Period, Posting Requirement, And Notification Of Changes. The certification, unless suspended or revoked, is effective for one (1) calendar year from the date of issue printed on the certificate. The certification applies only to the person named therein and is not transferable. The board must be notified in writing of any changes in the certified evaluator's business address, phone number, or fees for evaluation or related services, within thirty (30) days of such changes. (1-1-04)T

04. Expiration And Renewal Of Certification. No certification shall be renewed, except as follows: (1-1-04)T

a. At least sixty (60) days prior to the expiration of the certification, the certified evaluator shall apply for renewal of the certification on forms provided by the board. (1-1-04)T

b. The renewal application must be accompanied by: (1-1-04)T

i. Proof of professional licensure; (1-1-04)T

ii. Assurances and release form; (1-1-04)T

iii. Verification of continuing education participation as required in Subsection 040.05; (1-1-04)T

iv. A statement of fees the applicant charges for evaluation and related services; (1-1-04)T

v. An application renewal fee of fifty dollars (\$50), payable to the board; and (1-1-04)T

vi. Copies of two (2) psychosexual evaluations completed by the applicant within the past year, with names and identifying characteristics redacted. (1-1-04)T

c. An evaluator who has not renewed his certification shall be removed from the evaluator roster thirty (30) days after his certification has expired. (1-1-04)T

d. An evaluator whose certification has been expired for less than one (1) year, may reapply for certification following the certification renewal process outlined in Subsection 050.04. (1-1-04)T

e. An evaluator whose certification has been expired for one (1) year or longer, may reapply for certification following the initial certification process outlined in Subsection 050.01. (1-1-04)T

051. REQUEST FOR CONDITIONAL WAIVER.

The board may consider an applicant's request for conditional waiver. Conditional waiver requests shall only be considered for deficiencies in experience qualifications as established in Subsection 040.04. (1-1-04)T

01. Request. A request for conditional waiver must be submitted with the initial certification application. (1-1-04)T

02. Representation. An applicant who is granted a conditional waiver may not represent himself as a certified evaluator. (1-1-04)T

a. An evaluator who is granted a conditional waiver shall indicate on the psychosexual evaluation signature line that he is an approved psychosexual evaluator by waiver. (1-1-04)T

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b. The evaluator roster shall identify an evaluator who is granted a conditional waiver, and indicate the date his waiver shall expire. (1-1-04)T

03. Renewal. A conditional waiver is limited to a period of two (2) years. Conditional waivers may not be extended or renewed after two (2) years. (1-1-04)T

a. An evaluator who has been granted a conditional waiver may apply to renew his waiver after the first year, utilizing the certification renewal process indicated in Subsection 050.04. (1-1-04)T

b. Documentation must be included with the renewal application verifying the applicant's progress in attaining full qualification requirements. (1-1-04)T

c. An evaluator who fails to demonstrate progress in attaining full qualification requirements after the first year, may not be approved for renewal of the conditional waiver for the second year. The evaluator shall be removed from the evaluator roster. (1-1-04)T

052. -- 059. (RESERVED).

060. CENTRAL ROSTER OF CERTIFIED EVALUATORS.

The board shall publish a roster indicating the names of certified evaluators, business addresses, and fees for evaluation and related services. Only certified evaluators listed on the roster are eligible to conduct pre-sentence psychosexual evaluations pursuant to Section 18-8316, Idaho Code. A copy of the roster may be obtained from the board, and is posted on the board's website. (1-1-04)T

061. EXCLUSION.

Mental health employees of the Department of Correction, who conduct psychosexual evaluations pursuant to Section 18-8317, Idaho Code, are exempt from the certification process. (1-1-04)T

062. -- 069. (RESERVED).

070. DENIAL AND REVOCATION OF CERTIFICATION.

01. Cause. The board may deny, suspend, or revoke certification of an applicant or certified evaluator for any of the following reasons: (1-1-04)T

a. Failure to comply with any portion of this chapter. (1-1-04)T

b. Failure to meet the qualifications as required in Section 040. (1-1-04)T

c. Falsification of any information or documentation, or concealing a material fact in the application for certification. (1-1-04)T

d. Failure to furnish any data, information or records as requested. (1-1-04)T

e. Demonstration of inadequate knowledge. (1-1-04)T

f. Performance of two (2) or more psychosexual evaluations during the current certification period that the board finds are below standard. (1-1-04)T

g. Unsatisfactory results of the background investigation, or any other aspect of the application process. (1-1-04)T

h. Refusal or failure to participate in the quality assurance process. (1-1-04)T

i. A guilty plea or conviction for a felony criminal offense or a misdemeanor offense against a person. (1-1-04)T

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j. A domestic violence protective order issued against the applicant or evaluator within the previous five (5) years. (1-1-04)T

k. A criminal, civil or administrative determination that the evaluator has committed, permitted, or aided and abetted the commission of any illegal act while holding an evaluator certification. (1-1-04)T

l. Accepted a gift or favor from a sexual offender being assessed, from the family of the sexual offender being assessed, or from their agent. (1-1-04)T

m. Provided a gift or favor to a sexual offender being assessed, to the family of the sexual offender being assessed, or to their agent. (1-1-04)T

n. Unless permitted by the court, demonstration of a conflict of interest by providing both the psychosexual evaluation and treatment or by referring the sexual offender to the evaluator's employer or business associate. (1-1-04)T

02. Reapplication. An applicant or certified evaluator may reapply for certification under the following conditions: (1-1-04)T

a. An applicant whose certification is denied, may reapply when evidence is available to confirm attainment of qualifications as required in Section 040. (1-1-04)T

b. A certified evaluator whose certification has been revoked, may request permission to reapply for certification after one (1) year following revocation. (1-1-04)T

c. Permission to seek certification following revocation is granted solely within the discretion of the board. (1-1-04)T

03. Second Revocation. Upon a second certification revocation, no further certification shall be issued. (1-1-04)T

071. -- 079. (RESERVED).

080. NOTICE OF INTENT.

The board must provide the applicant or certified evaluator with notice of intent to deny, suspend, or revoke certification, and the right to appeal. (1-1-04)T

01. Notification Of Applicant. The board shall notify the applicant or certified evaluator of the board's intent to deny, suspend or revoke certification. The notice shall be mailed to the applicant or certified evaluator by certified mail. (1-1-04)T

02. Contents Of Notice. The notice shall: (1-1-04)T

a. State the basis for the intended action of the board; (1-1-04)T

b. May suggest means by which the matter might be remedied; and (1-1-04)T

c. Shall provide the applicant or certified evaluator an opportunity to answer, or to show cause in the matter. (1-1-04)T

081. APPEAL.

The applicant or certified evaluator shall have not more than thirty (30) days from the date the notice is served to file a written appeal of the board's statement of intended action. The written appeal shall include documentation supporting the appellant's argument refuting the board's intended action. (1-1-04)T

082. HEARING OFFICER.

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A hearing officer, designated by the board, shall receive and distribute to all board members copies of the written appeal, and any additional information, data, documents or references for the board's consideration. The hearing officer shall set the appeal hearing time and place, and submit notices to all parties. (1-1-04)T

083. HEARING.

01. Hearing Procedures. Procedures for a hearing before the board are governed by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (1-1-04)T

a. The appeal hearing shall be conducted during a regular board meeting. The board shall review the written appeal, and any additional information, data, documents or references furnished by the appellant. The board reserves authority to place reasonable limitations on the time allotted to conduct the hearing. The board also reserves the option to delegate authority to the hearing officer to conduct additional fact finding, for further review by the board. (1-1-04)T

b. Appeal hearings may be conducted by teleconference. (1-1-04)T

c. All board members are entitled to attend and participate in a hearing. (1-1-04)T

d. Appeal determinations shall be conducted during executive session. (1-1-04)T

02. Final Notice. The applicant or certified evaluator shall be notified by certified mail within two (2) weeks of the board's final decision concerning the action being appealed. (1-1-04)T

084. -- 089. (RESERVED).

090. COMPLAINTS.

01. Complaints. Any individual may file against an evaluator by submitting a written complaint to the board. A complaint must include: (1-1-04)T

a. The full name and address of the complainant; (1-1-04)T

b. The name, address, and telephone number (if known) of the evaluator; and (1-1-04)T

c. A clear and accurate statement of the facts describing the allegations against the evaluator. (1-1-04)T

02. Screening. The hearing officer shall investigate all complaints to determine appropriateness for board action. (1-1-04)T

a. Complaints determined to be more appropriate for intervention by another oversight agency shall be referred to that oversight agency. (1-1-04)T

b. Some complaints may be appropriate for intervention by the board and referral to another oversight agency. (1-1-04)T

c. If, after investigation, the facts and evidence are insufficient to warrant board review, no further action shall be taken. (1-1-04)T

091. NOTICE OF COMPLAINT.

01. Notice. The certified evaluator shall be notified in writing of the complaint filed against him and the board's investigation of the complaint. (1-1-04)T

02. Rights to Hearing. The certified evaluator shall be provided the opportunity to appear before the

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board to present his position concerning the allegations of the complaint. Hearing procedures outlined in Section 083 shall apply. (1-1-04)T

092. -- 099. (RESERVED).

100. QUALITY ASSURANCE AND TECHNICAL REVIEW.

The board shall develop policies concerning quality assurance of psychosexual evaluations, and recommendations for quality and performance improvements. (1-1-04)T

101. -- 109. (RESERVED).

110. PSYCHOSEXUAL EVALUATION.

Psychosexual evaluations shall be submitted in the format developed by the board and include the information delineated in the "Required Format for Psychosexual Evaluations" as referenced in Section 004. (1-1-04)T

111. -- 119. (RESERVED).

120. EVALUATION FOR VIOLENT SEXUAL PREDATOR REVIEW.

The sexual offender referred to the board for VSP review shall be evaluated as set forth in Section 110. (1-1-04)T

01. Evaluation Process. (1-1-04)T

a. The evaluator shall inform the sexual offender that the psychosexual evaluation is part of the board's review to determine if the offender should be designated as a VSP. (1-1-04)T

b. The sexual offender shall have an opportunity for input at the time of the psychosexual evaluation. (1-1-04)T

c. Polygraph examination may be waived by the board. (1-1-04)T

121. FAILURE TO COOPERATE.

Public safety takes precedence over the decision of a sexual offender not to cooperate with the evaluation. The sexual offender shall be informed that the board may designate an offender as a VSP if he fails to cooperate with the psychosexual evaluation process or refuses to release records. (1-1-04)T

122. INTENTION TO RE-OFFEND.

If credible evidence supports a finding that a sexual offender has indicated an intention to re-offend, the offender shall be referred to the board. Pursuant to Section 18-8314(5), Idaho Code, the sexual offender shall be designated as a VSP. (1-1-04)T

123. SCOPE OF EVALUATION.

The board and the evaluator conducting the psychosexual evaluation may have access to and may review all necessary records on the sexual offender to conduct the assessment. (1-1-04)T

124. -- 129. (RESERVED).

130. BOARD REVIEW.

The board shall assess how biological, psychological, and situational factors, may cause or contribute to the offender's sexual behavior. (1-1-04)T

01. Evidence. (1-1-04)T

a. The board may collect documentary evidence in the form of copies, facsimiles, hearsay, or excerpts. (1-1-04)T

b. The board may take notice of any facts that could be judicially noticed in the courts of this state, and generally recognized technical or scientific facts within the board's specialized knowledge. (1-1-04)T

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c. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (1-1-04)T

d. The board may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds. (1-1-04)T

e. The board is not obligated to accept or review oral statements or documents, other than those of the victim. (1-1-04)T

f. All other evidence may be admitted. (1-1-04)T

02. Review. The board's review for VSP designation is conducted in executive session pursuant to Section 18-8315, Idaho Code. The board may authorize individuals to attend a designated period of the executive session. (1-1-04)T

03. Teleconference. A review conducted by teleconference is permitted. (1-1-04)T

131. DEMONSTRATION OF HIGH RISK.

The board determines if a prima facie case exists to justify the sexual offender's designation as a VSP. A sexual offender shall be designated as a VSP if his risk of re-offending sexually or threat of violence is of sufficient concern to warrant the designation for the safety of the community. (1-1-04)T

132. BOARD VOTE.

The board reviews documentation and makes a determination whether a sexual offender presents a high risk of re-offense, and whether the sexual offender should be designated as a VSP. (1-1-04)T

01. Member Exclusion. A board member who has had prior association with the sexual offender being reviewed is excluded from the discussion and voting process on that offender. (1-1-04)T

02. Vote. A majority vote to designate a sexual offender is required. (1-1-04)T

a. Votes are taken and recorded in executive session pursuant to Section 18-8315, Idaho Code. (1-1-04)T

b. Votes of individual members are not public record. (1-1-04)T

03. Decision. (1-1-04)T

a. The board may conclude from the evidence that the sexual offender has or probably has a mental abnormality or personality disorder, causing or contributing to the sexual offender's risk of re-offense. (1-1-04)T

b. The board may designate a sexual offender as a VSP with or without a finding of mental abnormality or personality disorder. (1-1-04)T

c. The decision of the board is recorded in the minutes of the regular meeting. (1-1-04)T

d. The results of any designation action may be requested by submitting a public record request to the board. (1-1-04)T

133. FINDINGS.

The board makes written findings that include the risk assessment; the reasons upon which the risk assessment was based; the determination whether the sexual offender should be designated as a VSP; and the reasons upon which the determination was based. (1-1-04)T

134. NOTICE OF DESIGNATION AS A VIOLENT SEXUAL PREDATOR.

Pursuant to Sections 18-8319(2) and 18-8320, Idaho Code, the sexual offender, the sheriff of the county where the

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sexual offender resides or intends to reside upon release, the central registry, and the IDOC, are notified of the offender's designation as a VSP. Notice is in the form of the board's written findings. (1-1-04)T

135. -- 139. (RESERVED).

140. JUDICIAL REVIEW.

A sexual offender designated as a VSP has the right to judicial review of the designation, pursuant to Section 18-8321, Idaho Code. A request for judicial review must be filed with the courts no more than fourteen (14) calendar days after receiving the "Notice of Designation as a VSP," from the board. (1-1-04)T

141. -- 149. (RESERVED).

150. VICTIMS.

The board respects and complies with the rights of victims as identified in Section 19-5306, Idaho Code, and Article I, Section 22, Idaho Constitution. (1-1-04)T

151. LOCATING VICTIMS.

01. Attempt to Locate. The board shall make a good faith effort to locate the victim of the sexual offender's crime of conviction. The purpose for this effort is to inform the victim of the sexual offender's referral for VSP designation review. (1-1-04)T

02. Methods. In effort to locate the victim, the board may use information contained in IDOC or Commission for Pardons and Parole records, telephone directories, or contact with the county where the case was tried. (1-1-04)T

03. Decision. If the victim has been located, the board notifies the victim of the VSP designation action. (1-1-04)T

04. No Contact. The board respects the right of the victim to not be contacted. (1-1-04)T

152. VICTIM PARTICIPATION.

The victim or person representing the victim, or both, is afforded an opportunity to testify or submit written documents for the board's consideration. (1-1-04)T

01. Meeting. The victim or person representing the victim, or both, is permitted to attend the portion of the executive session review pertaining to the specific sexual offender. The chairman has discretion to limit the allotted time for testimony by the victim or person representing the victim, or both. The victim or person representing the victim, or both, is excluded during any vote. (1-1-04)T

a. The victim or person representing the victim, or both, is permitted to review documents not restricted by law that are being considered as evidence by the board. (1-1-04)T

b. Before taking testimony from the victim, the board shall use reasonable means to verify the identity of the victim or person representing the victim, or to verify the authenticity of written statements. (1-1-04)T

c. The board may exclude evidence if the board determines the evidence is irrelevant, unduly repetitious, unreliable or excludable on constitutional or statutory grounds. (1-1-04)T

02. Victim Confidentiality Protected. Communications between the board and victim or person representing the victim, or both, are confidential. Information identifying the victim or the location of the victim is exempt from disclosure, pursuant to Section 18-8321(3)(a) and (b), Idaho Code. (1-1-04)T

153. -- 999. (RESERVED).

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